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IN THE

SUPREME COURT OF THE UNITED STATES

No. 72-824

BOARD OF EDUCATION OF THE CITY OF PLEASANT GROVE,
Petitioner,

v.

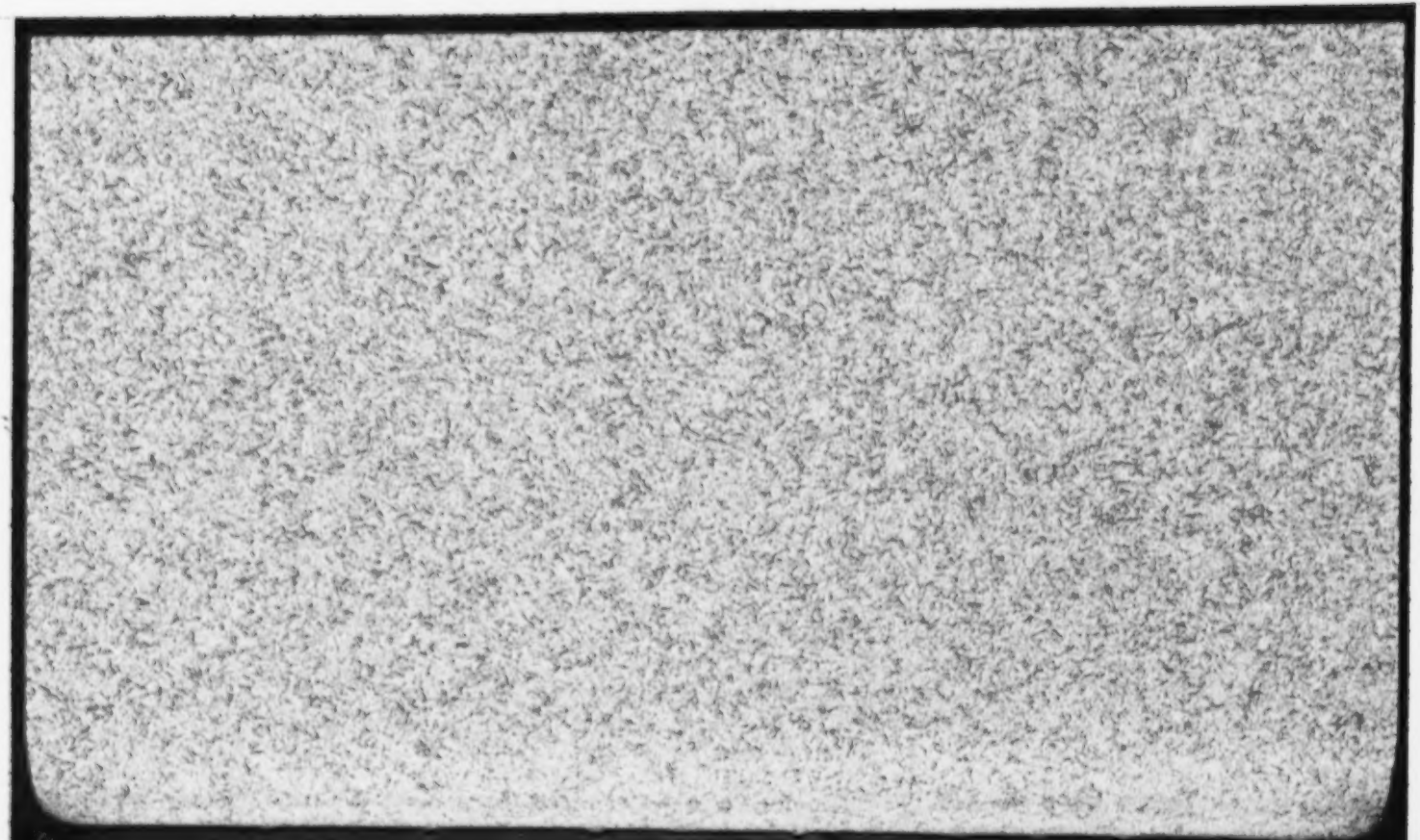
LINDA STOUT, et al., JEFFERSON COUNTY BOARD OF EDUCATION, and THE UNITED STATES OF AMERICA,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MEMORANDUM FOR THE JEFFERSON COUNTY BOARD OF EDUCATION

MAURICE F. BISHOP, County Attorney
601-09 Frank Nelson Building
Birmingham, Alabama 35203

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St. 63101 314-231-4477



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PREFATORY STATEMENT

The subject Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was filed by the Board of Education of the City of Pleasant Grove (Pleasant Grove) to review part of the Order of that Court entered September 7, 1972 in **Stout v. Jefferson County Board of Education**, 466 F.2d 1213. The United States has filed a Memorandum in Opposition to the peti-

tion. Influenced by its strong desire to bring all litigation and controversy to an end and "get on with its business of providing quality education" for the children of all races under the Court approved unitary zoning plan, the County Board did not originally respond to the petition. It has been directed to do so.

MEMORANDUM

The genesis of this petition may be said to have commenced on June 26, 1969, with the decision of the Court of Appeals for the Fifth Circuit (5th C.A.) in **United States v. Jefferson County Board of Education**, 417 F.2d 834, where the Court rejected the "Freedom-of-Choice" in effect in the County System, specifically noted and directed that:

> "For aught that appears, attendance zones would now accomplish the objective insofar as student assignment is concerned. The District Court is directed on remand to consider zone assignments in each system."

Immediately following that decision, the County Board, in cooperation with the Office of Education of the United States Department of Health, Education and Welfare (HEW) and the Bureau of School Services, University of Alabama (recommended by HEW), undertook an exhaustive study, resolutely determined to prepare a plan that would unquestionably eliminate all vestiges of the dual system, effectively create a unitary system in Jefferson County, and comply with every judicial requirement. The County Board and its personnel prepared a zoning assignment plan as directed.

The plan contained a provision pairing the formerly all white schools located in the City of Pleasant Grove with the all black Woodward school located in the unin-

corporated area just outside the limits of Pleasant Grove. On August 4, 1969, oral hearing was held on the plan in the District Court and the following day an order was entered approving the plan, with modifications. On the same date of the oral hearing (August 4, 1969), the City Council of Pleasant Grove adopted a resolution creating the Pleasant Grove School District (historically a part of the Jefferson County School System), named a Board of Education and proceeded to activate that separate school system.

The Justice Department did not appeal from the District Court Order of August 5, 1969. The plaintiff did, and the appeal was consolidated with twelve other cases, heard en banc, and made the subject of the consolidated en banc Decision of the Fifth Circuit in **Singleton, et al. v. Jackson, Mississippi Separate School District,** decided December 1, 1969, 419 F.2d 1211. The **Jefferson** case was remanded with the observation that:

> "The plans approved by the District Court and now under review in this Court do not comply with the standards required in Alexander v. Holmes County Board of Education, 1969, 24 L.Ed.2d 19."

When this case was instituted on June 4, 1965, the ratio in the County System was 80% white and 20% black. The enrollment in the schools in Pleasant Grove was as follows:

School	White	Black
Pleasant Grove Elementary and Junior High School	907	0

The attendance areas for these schools did not follow the Pleasant Grove municipal boundaries. Approximately 150 students attending the Pleasant Grove schools were from surrounding communities. All of Pleasant Grove's high school students attended school outside the city. Under the District Court Order of August 5, 1969, the grade

structure of the schools in Pleasant Grove and the projected racial composition of each was as follows:

School	Grades	White	Black
Pleasant Grove Jr. High	7-9	395	70
Pleasant Grove Elementary (Woodward Bldg.)	1-6	665	148
Pleasant Grove Elementary		— closed —	

Students residing in Pleasant Grove were to attend Hueytown High School, in the County System (Grades 10-12).

On August 15, 1969, the individual plaintiff filed a motion seeking to enjoin transfer of any County School property and activation of the new Pleasant Grove System.[1] The District Court declined to enjoin activation of the Pleasant Grove System.

Pursuant to mandate issued on December 1, 1969 in the **Singleton** case, the District Court ordered new plans to be filed, and following hearings thereon, issued its order of June 30, 1970 requiring that the activated Pleasant Grove System accept a minimum of 50 non-resident black students for the 1970-71 school year and a maximum of 300 black students for the 1971-72 school year.

On appeal, the Fifth Circuit Court of Appeals in **Stout v. United States** (decided July 6, 1971), 448 F.2d 403, vacated the District Court Order and remanded the case with directions:

> ". . . to implement a student assignment plan for the 1971-72 school term which complies with the plans established in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed. 554 (1971), insofar as it relates to the issues in this case, and it encompasses the entire Jefferson County school

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[1] None of the school property has been conveyed. Legal title has remained in the County System, but the City of Pleasant Grove has issued bonds for construction of a new school, secured, in part, by a city sales tax.

district as it stood at the time of the original filing of this desegregation suit."

On September 8, 1971, the District Court approved an amended plan which provided that (A-9-10):[2]

"The county board shall for the 1971-72 school year educate the students in grades 1-3 residing outside the Pleasant Grove city limits and as many as 120 students in grades 4-6 residing outside the Pleasant Grove city limits, utilizing the Dolomite school facility for such purpose. The Pleasant Grove board shall educate for the 1971-72 school year all students in grades 1-6 residing in its city limits and any students in grades 4-6 residing outside the city limits as cannot be accommodated by the county board at Dolomite under the preceding sentence. The Pleasant Grove board shall furnish free transportation to students within its school attendance zone but residing outside the city limits and more than two miles from their assigned school."

During the following school years the pupil attendance in the Pleasant Grove System has been as follows:

School Year	Grade Structure	White	Black
1969-70	1-9	1,063	—
1970-71	1-9	1,027	—
1971-72	1-6	647	26
	7-11	587	304

For the following school years, the County Board continued to provide education for all students residing in Pleasant Grove and attending the grades indicated:

School Year	Grades
1969-70	10-11-12
1970-71	11-12
1971-72	12

[2] Figures in parentheses preceded by the prefix "A" refer to the Appendix pages of the petition in this cause.

When school opened in September 1971, the Pleasant Grove System did not provide the transportation required by the District Court Order (A-10). The plaintiff applied for an order to require compliance and on September 14, 1971, the District Court issued a show cause order (A-12-13). The Court found that suitable buses were available to the Pleasant Grove Board for a "price of $500 for each bus purchased" and that this was "not beyond the financial capabilities of the Pleasant Grove system."[3]

It is true, as stated by petitioner (its brief p. 3) that "the City had never owned or operated school buses", but, by the same token, the City "had never owned or operated any schools". Additionally, the testimony did not show, as argued by petitioner, that "without dispute" funds available to the City Board "were inadequate to support the purchase and operation of a transportation system without substantial adverse effect on the school budgets." To the contrary, the District Court correctly noted that (A-16):

> "Under the current statutes of Alabama a substantial part of the operational costs can be recovered by the Pleasant Grove system through the state minimum program fund allocations."[4]

The District Court did not order dissolution of the Pleasant Grove School District, but directed (A-17):

> "If the Pleasant Grove Board cannot, for financial reasons or otherwise, operate its school system under the terms that have been set forth in the earlier orders, then it should not be required to do so by the court but should be allowed to 'return' the system to the county board for further administration."

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[3] As every party to this proceeding knows, it involved an expenditure of substantially less than has been spent by Pleasant Grove in trying to avoid purchase of the buses.

[4] See Title 52, Section 209, **1958 Recompiled Code of Alabama (Code)**.

On September 24, 1971, the Pleasant Grove Board notified the Court it intended "to operate its own system without transportation," and on the same date, the District Court, pursuant to its prior orders (A-12-17), deemed that the Pleasant Grove Board had "elected to transfer responsibilities for the general administration and supervision of public education within the Pleasant Grove zone to the Jefferson County Board of Education" which, since that date, has operated the schools under court order.

The District Court permitted the fragmentation of the Pleasant Grove System,[5] which, in effect, created or triggered this litigation. The County Board did not appeal that order.

Children in the County System residing more than two road miles from the school they attend are provided free transportation. A substantial part of the cost of any system in Alabama providing such transportation is recovered by the School Board from the State Minimum Program Fund. Title 52, Section 209, **Code**. The District Court concluded that students residing in the unincorporated area of Jefferson County which was carved out of the County System to supply blacks to integrate Pleasant Grove were entitled to the free transportation they would have received had they been assigned to a County school.

The District Court Order required Pleasant Grove to provide these students, assigned to its schools, with the

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[5] Although a new school district may not be created where its effect would be to impede the process of dismantling a dual system. **Wright v. Council of the City of Emporia**, 407 U.S. 451; **United States v. Scotland Neck City Board of Education**, 407 U.S. 484; **Lee v. Macon County Board of Education**, 448 F.2d 746, 752; **Stout v. Jefferson County Board of Education**, 448 F. 2d 403, 404; **Haney v. County Board of Education**, 410 F.2d 920, 924; **Burleson v. County Board of Election Commissioners**, 308 F.Supp. 352, 356, aff'd 432 F2d 1356; **Aytch v. Mitchell**, 320 F.Supp. 1372, 1377.

same free transportation which they would have received except for the fragmentation.

The suggestion of petitioner that free transportation for its students should be furnished by a separate school system is legally impermissible and economically ill advised, for the following reasons, *inter alia*:

(1) As correctly found by the District Court, the Pleasant Grove System would recover "a substantial part of the operational costs . . . through the state minimum program fund allocations," but a separate system would not.

(2) There is no legal authority in Alabama for a school system to transport students outside its area and into another system. There are 34 municipalities in Jefferson County, 10 separate school systems,[6] and 11 other municipalities are currently eligible to form separate school boards under state law.[7] If the County Board could be required to provide transportation for Pleasant Grove students, it could be required to transport students to other municipal systems already in existence and others which might be created. The economic consequences would wreck the County System.

(3) The Pleasant Grove System received all school funds which previously went to the County. To require citizens residing in the unincorporated area of the County and in municipalities which had not activated separate systems to provide transportation for the Pleasant Grove

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[6] County, and school systems in the Cities of Mountain Brook, Homewood, Fairfield, Birmingham, Tarrant City, Midfield, Bessemer, Vestavia Hills and Pleasant Grove (inactive).

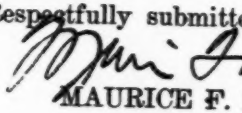
[7] Brighton, Gardendale, Graysville, Hueytown, Irondale, Leeds, Lipscomb, Trussville, Adamsville, Fultondale and Warrior. Title 52, Section 148, **Code**, provides that any city having a population of 2,500 or more in the most recent census is eligible to create its own board of education.

System where the Pleasant Grove System received the school funds would be grossly discriminatory and unfair to those citizens residing in the unincorporated area and in municipalities where the schools were operated under the County System.

(4) Under the petitioner's suggestion that the County Board be forced to provide transportation, Pleasant Grove would have no control or voice in the transportation of students it is obligated to educate and provide transportation.

The petition apparently is limited to this transportation issue since Pleasant Grove stated it does not "object to incorporation of the outside area into its school system, nor to the admission of black students residing in the incorporated area or elsewhere" (Pet. Br. p. 3). Insofar as the transportation issue is involved, the District Court correctly found the facts and the courts below applied established legal principles. We respectfully submit the petition is due to be denied.

Respectfully submitted



MAURICE F. BISHOP
601-09 Frank Nelson Building
Birmingham, Alabama 35203

March 2, 1973

Certificate of Service

I hereby certify that service in accordance with Rule 33 has been made by first class mail, postage prepaid, on counsel of record for all parties on this 5 day of March, 1973.